IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.1656 OF 1997**
**ALONG WITH**
**WRIT PETITION NO.1657 OF 1997**
**AND**
**WRIT PETITION NO.1658 OF 1997**

**WRIT PETITION NO.1656 OF 1997**

1) The Superintending Horticulture )
Officer, Nasik Division, Nasik. )

2) The Deputy Director of Horticulture)
Nasik, District Nasik. )

3) The Horticultural Nursery Officer )
Central Nursery, Chandwad )
District Nasik. ).. PETITIONERS

**VERSUS**

Tarabai Murlidhar Jadhav )
Madan Galli, Near Ganpati Temple )
Chandwad, District Nasik. ).. RESPONDENT

**WRIT PETITION NO.1657 OF 1997**

1) The Superintending Horticulture )
Officer, Nasik Division, Nasik. )

2) The Deputy Director of Horticulture)
Nasik, District Nasik. )

3) The Horticultural Nursery Officer )
Central Nursery, Chandwad )
District Nasik. ).. PETITIONERS

**VERSUS**

Sumanbai Sampatrao Kumbarde )
Resident of Rest House Compound )
Chandwad, District Nasik. ).. RESPONDENT

**WRIT PETITION NO.1658 OF 1997**

1) The Superintending Horticulture )
Officer, Nasik Division, Nasik. )

2) The Deputy Director of Horticulture)
Nasik, District Nasik. )

3) The Horticultural Nursery Officer )
Central Nursery, Chandwad )
District Nasik. ).. PETITIONERS

**VERSUS**

Smt.Janakabai Waman Bachhav )
residing at Bajarang Galli, Near )
Ganpati Mandir, Chandwad, )
District Nasik. ).. RESPONDENT

Mr.S.K.Chinchalikar, Assistant Government Pleader,
for the Petitioners in all the Petitions.

Mr.M.S.Karnit for the Respondent in all the Petitions.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 31ST MARCH 2005**

**ORAJ JUDGMENT :**

. These Petitions have been heard together as the question involved in all the three Writ Petitions is the same.

2. The orders impugned in each of these Petitions has been passed by the Industrial Court, Nasik in Complaints filed under Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The Industrial Court, ignoring the pleadings of the Petitioners that the establishment is not an "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947, has disposed of the Complaints on merits.

3. The workman concerned in each of these Petitions has contended that she was employed for years together on a temporary basis in the cultivation of plants and agricultural works which the Petitioners had undertaken. Each of the workman had put in more than 240 days in service from the year 1982 onwards. Since the benefits of permanency were not extended to the workmen, each of them filed Complaints before the Industrial Court, Nasik. The Petitioners have filed a similar Written Statement in each Complaint. The contention raised by them is that the establishment where the workmen were employed was an establishment run by the Department of Horticulture of the State of Maharashtra, and, therefore, is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Petitioners had also contested the claim on merits. According to the Petitioners, the work which the workmen were required to undertake were seasonal in nature. It has further contended that the seeds and grafts which were made available by the Petitioners to the cultivators were sold for a nominal price. Expenditure is incurred by the Government on the establishment by giving subsidy for such operationn and preparing of seedling and grafting. On this basis, it was contended that the Petitioners were not an "industry" as defined

under Section 2(j) of the Industrial Disputes Act, 1974.

4. The Industrial Court while disposing of the Complaints, has not framed any issue with respect to the question whether the establishment is an "industry". The only issue framed by the Industrial Court is whether the Complainant had proved that Respondent had completed 240 days before filing of the Complaints. The Industrial Court then proceeded to decide the Complaint and held that the Petitioners have committed an unfair labour practice under Item 6 of Schedule IV of the Act. The Petitioners were directed to make the Respondent workmen permanent with effect from 1st January 1989 and to give all benefits available to the permanent workman.

5. Aggrieved by the decision of the Industrial Court in the Complaints, the present Petitions have been preferred by the Petitioners. It is no doubt true that it was necessary for the Industrial Court to frame a specific issue as to whether the Petitioners' establishment where the three workmen were employed is an "industry". Having specifically raised this issue, it was necessary for the Industrial Court to frame the issue. Mr.Karnik for the Respondent in each Petition submits that although no issue has been framed, this Court sitting in its writ jurisdiction could consider

the pleadings and decide whether the establishment is an "industry". He relies on the judgment of the Supreme Court in the case of *Chief Conservator of Forests and another* vs. *Jagannath Maruti Kondhare and others*, **(1996) 2 SCC 293**. The Apex Court in this decision has taken a view that the demarcating line of sovereign and non-sovereign powers has largely disappeared. The State can always conduct welfare activities which cannot be strictly construed as sovereign functions of the State. Such functions would certainly fall under the purview of the definition of "industry". Mr.Karnik submits that based on the pleadings, it is obvious that the Petitioners' establishment is an "industry" and, therefore, there is no need to remand the matters to the Industrial Court for a decision on this issue.

6. In my view, whether an establishment is an "industry" or not is a question of fact which would be required to be established by evidence. No evidence at all has been led by either parties in respect of the character of the establishment, probably because no issue was framed. It would not, in my opinion, be appropriate to decide the issue without there being any evidence on record. Therefore, the proper course would be to remand the Complaints to the Industrial Court. The Industrial Court will first decide the issue as to whether the Petitioners' establishment which fall under

the Department of Horticulture is an "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947. The Industrial Court will then decide the Complaints on merits.

7. Hence, the following order :-

(i) Writ Petitions allowed. The orders passed by the Industrial Court, Nasik in Complaint (ULP) Nos.9 of 1990, 10 of 1990 and 11 of 1990 are set aside and the Complaints are remanded to the Industrial Court, Nasik.

(ii) The Industrial Court, Nasik to frame an issue as to whether the Petitioners' establishments fall within the purview of the term "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947.

(iii) The parties shall appear before the Industrial Court, Nasik on 25th April 2005. The Industrial Court will permit parties to file additional pleadings and documents within a period of three weeks thereafter. The Industrial Court

will then permit the parties to lead any oral evidence, if so desired by the parties, and shall decide the Complaints by 30th September 2005. All issues shall be decided together by the Industrial Court.

(iv) Pursuant to the interim orders passed by this Court, the Respondent workmen have been provided work as and when work is available. The Petitioners will maintain this practice and continue to provide the Respondent workmen work as and when work is available till the decision in the Complaints. The Petitioners will also consider whether the workmen can be made permanent if vacancies arise.

8. Rule made absolute accordingly in each of the Writ Petitions. No order as to costs.

9. Parties to act on an authenticated copy of this order.